

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:

Revision of Part 22 and Part 90 of the
Commission's rules to Facilitate
Future Development of Paging Systems

WT Docket No. 96-18

Implementation of Section 309(j) of
the Communications Act -
Competitive Bidding

PP Docket No. 93-253

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Comments of the United States Telephone Association

The United States Telephone Association (USTA) submits these comments in response to the Notice of Proposed Rulemaking issued in the above-referenced proceeding.¹ USTA is the principal trade association of the local exchange carrier (LEC) industry. USTA represents over 1100 LECs, with a wide variety of company sizes within its membership. Many USTA members currently fulfill their obligations to provide universal local exchange telephone service through Basic Exchange Telephone Radio Systems (BETRS) licensed for the two-way channels at issue in this proceeding. USTA applauds the Commission's efforts to encourage growth in the paging industry. However, USTA notes that such efforts should not undermine the universal service mandate at the foundation of U.S. telecommunications policy. See 47 U.S.C. § 151.

USTA supports the earlier comments on the Commission's interim licensing proposal filed by Emery Telephone Company (Comments of Emery Telephone, March 1, 1996). USTA agrees with Emery that the Commission should clarify that its application freeze does not apply

¹Revision of Part 22 and Part 90 of the Commission's rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) -Competitive Bidding, Notice of Proposed Rulemaking, WT Docket No. 96-18, PP Docket 93-253, FCC 96-52 (released February 9, 1996) ("Notice").

to applications filed to provide local exchange telephone service through the BETRS channels created for that purpose. Such a freeze would be contrary to the Commission's universal service mandate, see 47 U.S.C. § 151, and may deprive subscribers in rural areas of basic local exchange service. See Comments of Emery Telephone at 3-5; see also Reply Comments of National Telephone Cooperative Association (March 11, 1996)(freeze on processing of BETRS applications would be harmful to the public interest). Additionally, continued acceptance and processing of applications to provide local exchange service through BETRS systems is sound public policy - there is no basis for the ridiculous result of freezing applications and auctioning spectrum to provide paging service in areas where basic local exchange service (needed to respond to a page) is not fully available. See Comments of Emery Telephone at 5, n.3.

The Commission should continue to accept and process BETRS applications, and grant such applications on a primary basis. Such grants would recognize that, particularly for rural areas, the Commission's first priority is to ensure the cost-effective deployment of basic telecommunications services to all Americans. While some rural telephone companies may provide service to certain remote areas through broadband PCS spectrum, Notice, para. 30, it would be contrary to the universal service mandate to limit rural telephone companies to that alternative. Moreover, obtaining PCS spectrum is not a cost-effective substitute for rural LECs who are already providing BETRS on the existing frequencies, and desire to expand or modify existing systems to provide better or additional service to rural areas. There is no basis for depriving subscribers in rural areas of access to basic telecommunications services based on the speculative possibility that PCS may fulfill this universal service need.

Accordingly, USTA recommends that the Commission reaffirm the decision that, because of the public interest in extending basic telephone service to sparsely populated areas, competitive bidding should not be used to select between BETRS and other applicants. See Notice, paras. 29-30. As the Notice recognizes, BETRS applications are unlikely to be mutually exclusive with paging operators. Notice, para. 29. To the extent that BETRS applications are mutually exclusive, the public interest in universal deployment of basic telecommunications

service, coupled with the interest in minimizing the expense of deploying of such service in areas where the cost is significantly above the national average, e.g. sparsely populated rural areas, require that such BETRS applications not be subjected to competitive bidding. It is unclear how parties who seek to provide entirely different services, with service demand concentrated in different areas, based on entirely different business incentives, could meaningfully value the spectrum on the same basis. Consequently, competitive bidding between BETRS applicants and mutually exclusive applicants for an MTA paging license would not meaningfully award spectrum to the party that “values it most.” Moreover, it would be contrary to the public interest to require that LECs, subject to universal service obligations to serve high-cost, low-demand areas, be required to participate in an auction for the spectrum which permits them to fulfill those obligations in the most cost-effective manner possible. Rather, BETRS applications should be granted on a primary basis, with advanced services licensed only where they do not interfere with subscribers’ ability to receive basic service.

Similarly, while USTA supports the Commission’s proposal to permit geographic partitioning of license areas to make spectrum available, Notice, para. 30, the Commission should not require that universal service providers of local exchange service negotiate with providers of advanced services, e.g., paging, for the right to deploy basic local exchange facilities in the most cost-effective manner possible. In order to ensure that its rule changes do not prevent BETRS from providing service to areas that otherwise would lack basic telephone service, Notice, para. 30, the Commission should establish rules which give first priority to applications to provide basic exchange services. Consistent with this approach, the Commission should provide adequate notice to potential bidders that rural portions of the service areas up for auction may be subject to partitioning to ensure the provision of basic exchange service to subscribers in those areas. To the extent that the areas served by BETRS are sparsely populated and not typically sought by paging operators, Notice, para. 29, this approach should not hinder the auctioning of geographic paging licenses, nor inhibit the growth of the paging industry.

USTA supports the Commission's proposals to permit incumbent licensees to continue operating under existing authorizations and to make modifications as necessary to better serve the public. Notice, para. 38-39. The Commission should clarify, however, that the treatment of incumbent licensees applies not only to Private Carrier Paging and Common Carrier Paging licensees, but also to BETRS licensees, as BETRS is not referenced in this section of the Notice. Additionally, the geographic licensee's consent should not be required where the incumbent provider proposes to expand into an unserved area, see Notice, para. 39, where the application proposes to expand BETRS service into a geographic area unserved by basic telephone service. This rule would recognize both the principle that the Commission should avoid unnecessary regulatory hurdles to the expansion of basic service, and the practical reality that conflicts between local exchange provider BETRS licensees and paging providers are unlikely, given the rural areas served by BETRS.

USTA applauds the Commission's efforts, described in the Notice, to streamline the regulatory process, to award spectrum authorizations in the most efficient manner possible, and to promote the deployment of sophisticated advanced services such as paging. Such efforts, however, should not lose sight of the Commission's mandate to promote the deployment of basic local exchange services to all Americans, including those residing in rural areas.

Respectfully submitted,

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